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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,016	04/15/2004	Bruce D. Detwiler	RPS6116-C1	7493
43971	7590	03/17/2006	EXAMINER	
CARDINAL HEALTH 7000 CARDINAL PLACE LEGAL DEPARTMENT - INTELLECTUAL PROPERTY DUBLIN, OH 43017			DEVORE, PETER T	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/825,016	<b>Applicant(s)</b> DETWILER ET AL.	
	<b>Examiner</b> Peter T. deVore	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.  
     4a) Of the above claim(s) 2, 15 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-14, 16-28 and 30-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

This application contains claims directed to the following patentably distinct species: Species 1 shown in Figure 8, and Species 2 shown in Figure 9. The species are independent or distinct because the manner in which the seal bursts is highly dependent on the shape of the stress riser.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 3, 7-14, 16, 19-28, 30, 34-36 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

During a telephone conversation with Mr. Nickey on 2/24/06 a provisional election was made with traverse to prosecute the invention of Species 2, claims 4-6, 17, 18, and 31-33. Affirmation of this election must be made by applicant in replying to this Office action. Claims 2, 15, and 29 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "the chevron shape" in line 2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7, 12, 13, 22-24, 26, 28, 34, 37, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown.

Regarding claim 1, the Brown reference discloses a dispensing and application apparatus comprising first and second compartments 27 (see Fig. 2), first and second frangible seals 26 (see Fig. 2), a sheet 10 divided by the seals to form the compartments (see Fig. 2), an applicator 11 having a periphery and joined to the sheet with a bond (see col. 7, lines 51-56), a chamber (28 and 12a) bounded by the sheet, applicator, bond, and seals (see Fig. 2), the first seal separating the first and second compartments (via additional separations comprising the chamber and the second seal, see Fig. 2), the second seal separating the second compartment and the chamber (see Fig. 2), the frangible seals designed to break when exposed to a predetermined pressure, providing fluid communication between the compartments, chamber, and applicator (see col. 8, lines 25-33). Regarding claim 7, the applicator is porous and absorbent, see col. 7, lines 32 and 55. Regarding claim 12, the seals are thermal seals (see col. 8, lines 14-18). Regarding claim 13, the Brown reference discloses a dispensing and application apparatus comprising two compartments 27 (see Fig. 2), a first sheet section 10, a second sheet section 20, a primary seal 21, two frangible seals

26 (see Fig. 6), an applicator 11 having a periphery and joined directly to the first sheet section and indirectly to the second sheet section with a bond (see col. 7, lines 51-56), a chamber (28 and 12a) bounded by the sheet sections, applicator, bond, and seals (see Fig. 2), the frangible seals designed to break when exposed to a predetermined pressure thereby creating a channel permitting fluid communication between the compartments and the chamber (see col. 8, lines 25-33). Regarding claim 22, the seals are thermal seals (see col. 8, lines 14-18). Regarding claims 23, the Brown reference discloses a dispensing, mixing, and application apparatus comprising a plurality of compartments 27 (see Fig. 2) housing first and second substances (see col. 7, lines 60-64), a plurality of frangible seals 26 (see Fig. 2), a sheet 10 divided by the seals to form the compartments (see Fig. 2), a chamber (28 and 12a) formed by the sheet and dispensing a mixture of the substances (via applicator 11), the first seal located at a common edge between the first compartment and the chamber and designed to break when exposed to a first predetermined pressure (see Fig. 2 and col. 8, lines 25-33), the second seal located at an intermediate edge between the first compartment and second compartment (note that the chamber is also between the second seal and one of the compartments) and designed to break at a second predetermined pressure equal to the first pressure, thereby creating a channel and permitting communication between the first compartment and second compartment permitting mixing of the first and second substances (note that this occurs if the first seal is also broken, and see Fig. 2 and col. 8, lines 25-33). Regarding claim 24, the apparatus further comprises an applicator 11 having a periphery and joined to the sheet with a bond (see col. 7, lines 51-56), the

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chamber thereby bounded by the applicator, the bond, and the first seal (see Fig. 2).

Regarding claim 26, the sheet includes first sheet section 10 and second sheet section

20. Regarding claim 28, the chamber is bounded by the first frangible seal (see Fig. 2).

Regarding claim 34, the applicator is porous and absorbent, see col. 7, lines 32 and 55.

Regarding claim 37, the bond exterior edge is within the applicator periphery (see Fig.

2). Regarding claim 39, all of the seals are heat seals (see col. 8, lines 14-18).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10, 20, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown.

The Brown reference disclose an apparatus as discussed supra, but remains silent as to the surface area of the bond area compared to the surface of the applicator. However, it would have been obvious to modify the Brown apparatus so that the surface area of the bond area is between 62.5% and 87.5% of the surface area of the applicator, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 2336.

Claims 3-6, 9, 14, 16-19, 27, 30-33, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Gruenbacher.

Regarding claims 3, 4, 6, 16-18, 30, 31, and 33, the Brown reference discloses an apparatus as discussed supra, but does not disclose that the frangible seals have chevron shaped stress risers with sharp inflection points oriented toward the compartments. However, the Gruenbacher reference teaches a similar apparatus having frangible seals with a chevron shaped stress riser with a sharp inflection point oriented toward the compartment (see Fig. 1) for optimization of rupture location (see col. 3, lines 63-65). It would have been obvious to employ chevron shaped stress risers with sharp inflection points oriented toward the compartments on the frangible seals of the Brown apparatus in view of Gruenbacher for optimization of rupture location.

Regarding claims 5 and 32, although Brown and Gruenbacher remain silent as to the maximum orthogonal distance between the rear inflection points and the frangible seal second edges, it would have been obvious to modify the modified Brown reference so that the maximum orthogonal distance from the rear inflection points to the frangible seal second edge is in the range of less than a maximum orthogonal distance between the frangible seal first edges and the frangible seal second edges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 2336. Regarding claims 9, 19, and 36, the Brown reference discloses an apparatus as discussed supra whose sheet is flexible (see col. 7, lines 55-56), but does not disclose that the sheet is a laminated foil. However, the Gruenbacher



reference teaches the use of laminated foil in a similar apparatus for its good barrier properties (see col. 4, last full paragraph). It would have been obvious to use a laminated foil for the sheet of the Brown apparatus in view of Gruenbacher for its good barrier properties. Regarding claims 14 and 27, the Brown reference discloses an apparatus as discussed supra, but does not disclose that the first and second sheets are a single sheet interconnected at a fold line. However, the Gruenbacher reference teaches a similar apparatus whose first and second sheets are a single sheet interconnected at a fold line (see col. 3, lines 36-39) for reduction in the number of parts required to make the apparatus. It would have been obvious to modify the Brown apparatus so that its first and sheets are a single sheet interconnected at a fold line in view of Gruenbacher for reduction in the number of parts required to make the apparatus.

Claims 8, 11, 21, 25, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Smith.

Regarding claims 8 and 35, the Brown reference discloses an apparatus as discussed supra, but does not disclose that the applicator is a foam pad. However, the Smith reference discloses a similar apparatus wherein the applicator is optionally a foam pad (see col. 5, lines 43-48) for its good absorption properties. It would have been obvious to employ a foam pad as the applicator of the Brown apparatus in view of Smith for its good absorption properties.

Regarding claims 11, 21, and 25, the Brown reference discloses an apparatus as discussed supra wherein the part of the chamber adjacent the applicator can be

construed as a dispensing conduit, but does not disclose an applicator cover/end cap which releasably encloses the applicator and allows transmission the substances to a dispensing point when removed. However, the Smith reference discloses a similar apparatus including an applicator cover/end cap 12 which releasably encloses the applicator and allows transmission the substances to a dispensing point when removed for protection of the applicator before its first use. It would have been obvious to employ an applicator cover/end cap which releasably encloses the applicator and allows transmission the substances to a dispensing point when removed on the Brown apparatus in view of Smith for protection of the applicator before its first use.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T. deVore whose telephone number is (571) 272-4884. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Peter J. Van